

**Thomas Jefferson to George Washington, May 16, 1793, Opinion, from The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.**

**OPINION ON “THE LITTLE SARAH” W. MSS.**

[May 16 1793.]

The facts suggested, or to be taken for granted, because the contrary is not known, in the case now to be considered, are, that a vessel was purchased at Charleston & fitted out as a privateer by French citizens, manned with foreigners chiefly, but partly with citizens of the U. S., the command given to a French citizen by a regular commission from his government, that she had made prize of an English vessel in the open sea, & sent her in to Philadelphia. The British minister demands restitution, & the question is Whether the Executive of the U. S. shall undertake to make it?

This transaction may be considered 1. as an offence against the U. S. 2. as an injury to Great Britain.

In the 1st. view it is not now to be taken up, the opinion being that it has been an act of disrespect to the jurisdiction of the U. S., of which proper notice is to be taken at a proper time.

Under the 2d. point of view, it appears to me wrong on the part of the U. S. (where not constrained by treaties) to permit one party in the present war to do what cannot be permitted to the other. We cannot permit the enemies of France to fit out privateers in our ports, by the 22 article of our treaty. We ought not therefore to permit France to do it,

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the treaty leaving us free to refuse, & the refusal being necessary to preserve a fair and secure neutrality. Yet considering that the present is the first case which has arisen, that it has been in the first moment of the war, in one of the most distant parts of the U. S., and before measures could be taken by the government to meet all the cases which may flow from the infant state of our government and novelty of our position, it ought to be placed by Great Britain among the accidents

of loss to which a nation is exposed in a state of war, and by no means as a premeditated wrong on the part of the government. In this last light it cannot be taken, because the act from which it results placed the U. S. with the offended, & not the offending party. Her minister has seen himself that there could have been on our part neither permission nor connivance. A very moderate apology then from the U. S. ought to satisfy Great Britain. The one we have made already is ample, to wit, a pointed disapprobation of the transaction, a promise to prosecute & punish according to law such of our citizens as have been concerned in it, and to take effectual measures against a repetition. To demand more would be a wrong in Gr. Britain: for to demand satisfaction *beyond* what is adequate, is a wrong. But it is proposed further to take the prize from the captors & restore her to the English. This is a very serious proposition.

The dilemma proposed in our conferences, appears to me unanswerable. Either the commission to the commander of the privateer was good, or not good. If not good, then the tribunals of the country will take cognizance of the transaction, receive the demand of the former owner, & make restitution of the capture, & there being, on this supposition, a regular remedy at law, it would be irregular for the government to interpose.—If the commission be good, then the capture having been made on the high seas, under a valid commission from a power at war with Gr. Britain, the British owner has lost all his right, and the prize would be deemed good even in his own courts, were the question to be brought before his own courts. He has now no more claim

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on the vessel than any stranger would have who never owned her, his whole right being transferred by the laws of war to the captor.

The legal right then being in the captor, on what ground can we take it from him? Not on that of *right*, for the right has been transferred to him. It can only be by an act of *force*, that is to say, of reprisal for the offence committed against us in the port of Charleston. But the making of reprisal on a nation is a very serious thing. Remonstrance & refusal of satisfaction ought to precede; & when reprisal follows it is considered as an act of war, & never yet failed to produce it in the case of a nation able to make war.—Besides, if the case were important enough to require reprisal, & ripe for that step, Congress must be called on to take it; the right of reprisal being expressly lodged with them by the constitution, & not with the executive.

I therefore think that the satisfaction already made to the *government* of Great Britain is quite equal to what ought to be desired in the present case: that the property of the British *owner* is transferred by the laws of war to the *captor*; that for us to take it from the captor would be an act of force or reprisal which the circumstances of the case do not justify, & to which the powers of the Executive are not competent by the constitution.